IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

Crl.Rev.Pet.No. 3802 of 2007()

CRA.196/2005 of ADDL.SESSIONS JUDGE, ADHOC-II, KASARAGOD
CC.526/2002 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD

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REVN. PETITIONER: APPELLANT/ACCUSED

C.H.MOHAMMED IQBAL,
C.H.TOURIST HOME, M.G.ROAD,
KASARAGOD.

BY ADV. SMT.GOVINDU P.RENUKADEVI

RESPONDENTS: RESPONDENTS/COMPLAINANT/STATE

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1. JANARDHNAN,
PROP: JAY KAY FINANCE CORPORATION(REGD),
MARKET ROAD, UDMA, KASARAGOD TALUK.(DEAD),
REP. BY POWER OF ATTORNEY HOLDER,
ASHOKAN, S/O ANANDAN, LAXAM VEEDU, MANNIPPADY P.O,
RAMDAS NAGER, KASARAGOD TALUK.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3802 OF 2007

Dated this the 31st day of October, 2007

O R D E R

In this revision filed under Section 397 read with Section 401 Cr.P.C. the petitioner who was the accused in C.C. No.526/2002 on the file of the CJM, Kasaragod challenges the conviction entered and the sentence passed against him for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioner re-iterated the contentions in support of the revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the revision petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the further submissions before this court:-

The complaint has been filed by one Janardhanan styling himself as the Proprietor of Jay Kay Finance Corporation(registered). The said Janardhanan has not been able to establish his right over the said firm. It is true that the accused had availed a loan of Rs.50,000/- from Jay Kay Finance Corporation which is defunct now. The cheque in question was a signed blank cheque offered as a security in favour of Jay Kay Finance Corporation. In the absence of Janardhanan showing that he had the legal right to represent Jay Kay Finance Corporation, the complaint was misconceived and the courts below have failed to consider this aspect of the matter which was highlighted before both the courts.

5. I am afraid that I cannot agree with the above submissions. In the first place, both the judgments are silent regarding the contention now raised that Janardhanan had no right to represent Jay Kay Finance Corporation as its Proprietor. Hence, the presumption is that this point was not urged before the courts below. The complaint was filed by Janardhanan as Proprietor of Jay Kay Finance Corporation which is evidently a Proprietary concern. Even according to the revision petitioner, he had issued a signed blank cheque in favour of Jay Kay Finance Corporation but only as a security while availing a loan of Rs.50,000/-. The revision petitioner has no case that he has discharged the said liability and obtained the cheque back. This means that he is a defaulter to Jay Kay Finance Corporation. Even when the cheque is

offered as a security, it is liable to be used as a negotiable instrument in the event of default. At any rate, the cheque was not intended to be retained by Jay Kay Finance Corporation as a security for all times regardless of any default by the borrower. Both the courts have held that Janardhanan was the sole Proprietor of the concern and that the amount availed was a sum of Rs.50,000/- as a loan in the year 2002. The conviction was recorded after a careful evaluation of the oral and documentary evidence in the case. The said Janardhanan was represented by his Power of Attorney Holder one Asokan. Subsequently, Janardhanan, the complainant died, and his legal heirs appointed the same Asokan as their Power of Attorney Holder and continued the prosecution which ended in conviction.

6. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the revision petitioner. I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C.

Accordingly, the sentence imposed by the courts below on the revision petitioner is set aside and instead he is sentenced to pay a fine of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) within five months from today, failing which he shall suffer simple imprisonment for three months by way of default sentence. As and when the fine amount is deposited, the same shall be paid to the Power of Attorney Holder of the 1st respondent complainant by way of compensation under Section 357(1) Cr.P.C.

This revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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